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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **MAR 16 2010**  
SRC 07 800 22603

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

*Mari Plurson*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petitioner filed a motion to reconsider, which the director dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

This petition, filed on July 25, 2007, seeks to classify the petitioner pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was working as an engineering research associate at the Energy Systems Laboratory (ESL), a division of the Texas Engineering Experiment Station (TEES) at Texas A&M University. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel argues that the evidence submitted by the petitioner “has established that his past achievements are greater than those of his peers” and that “he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.” For the reasons discussed below, we uphold the director’s decision.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.--

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner received his Ph.D. in Engineering from Texas A&M University in 2004. The director found that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of the phrase, “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. 215, 217-18 (Comm’r. 1998) (hereinafter “NYSDOT”), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, mechanical engineering,<sup>1</sup> and that the proposed benefits of his work, improvements and research relating to building energy systems and Continuous Commissioning® technologies, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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<sup>1</sup> “Mechanical engineers research, design, develop, manufacture, and test tools, engines, machines, and other mechanical devices. Mechanical engineering is one of the broadest engineering disciplines. Engineers in this discipline work on power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines. They also work on power-using machines such as refrigeration and air-conditioning equipment, machine tools, material-handling systems, elevators and escalators, industrial production equipment, and robots used in manufacturing.” See <http://www.bls.gov/oco/ocos027.htm>, accessed on March 3, 2010, copy incorporated into the record of proceeding.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner received his Ph.D. from Texas A&M University and continued there as an engineering research associate at the ESL upon graduating. The petitioner submitted evidence that he is an Associate Member of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and a member of the American Society of Mechanical Engineers, but there is no documentation showing their membership requirements. The petitioner also submitted his Professional Engineer License for the State of Texas. The petitioner states: "All 50 States and the District of Columbia require licensure for engineers who directly offer their services to the public." Thus, the preceding documentation does not appear to set the petitioner apart from any other engineering professionals. Even if the petitioner had established that the preceding license and memberships are indicative of a degree of expertise significantly above that ordinarily encountered in the field of engineering, such evidence relates to the regulatory criteria for establishing eligibility as an alien of exceptional ability, 8 C.F.R. §§ 204.5(k)(3)(ii)(C) and (E), a classification that normally requires an approved alien employment certification. We cannot conclude that meeting one, two, or even the requisite three criteria, warrants a waiver of the alien employment certification process in the national interest. *Id.* at 218, 222.

Along with his published conference articles and project reports, the petitioner submitted several letters of support. In evaluating the reference letters, we note that letters concluding, with little explanation, that the petitioner meets the requirements set forth at *NYSDOT*, 22 I&N Dec. at 217-18, are insufficient. Similarly, letters that simply praise the petitioner's engineering skills or the novelty and potential significance of his research are less persuasive than letters that provide specific examples of how the petitioner has already influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive.

in the Department of Mechanical Engineering and Director of the ESL, Texas A&M University, states:

The ESL is one of the leading research and educational laboratories in the field of building energy systems and Continuous Commissioning® technologies in the United States. The major goals of the ESL are to develop and transfer energy efficiency technology for the public benefit to enable substantial energy savings while improving comfort and productivity. The ESL educates the public, conducts research and performs services to promote aggressive energy conservation measures in central utility plants and in commercial and institutional buildings.

\* \* \*

Since he joined our research team, he has repeatedly demonstrated his capabilities in various projects assigned him. He has broad knowledge in this highly specialized field. His research work not only has academic value, but is also very practical.

\* \* \*

During the course of his graduate study, [the petitioner] has developed and demonstrated his acquired expertise in applied technology research in energy efficiency.

[The petitioner's] dissertation involved the simulation and optimization of thermal and electric utility plants and hydraulic research of thermal distribution networks for large campuses. In his dissertation, he addressed two very important issues: the first is the development of the methodology and procedures for constructing and calibrating hydraulic simulation models for large thermal distribution systems. . . . He has put tremendous effort in his research and come up with ways to improve the methodology and procedures to build the simulation models, which are keys to obtain accurate and reliable models. He also applied his research to many real-world engineering projects and achieved excellent results. The ESL worked with the University of Texas at San Antonio on a campus expansion project and saved \$1.8 million in construction cost of their chilled water loop expansion project in 2003. Texas A&M University has one of the largest district heating and cooling systems in this country. The hydraulic simulation models, which [the petitioner] had helped construct, were successfully utilized for its 30-year master planning program and practically all of its various loop and utilities plants expansion projects. Because of his efforts and contributions, we are able to use techniques developed by him to solve various engineering problems regarding thermal distribution systems throughout the United States. . . . He has published several exceptional papers to share his research and experience with peers.

While the petitioner developed simulation models for ESL projects at Texas A&M University and at the University of Texas at San Antonio, there is no evidence showing that his methodologies have been applied by others or attracted significant attention throughout his field as being particularly noteworthy.

further states:

The second issue addressed in his dissertation is the development of thermal utilities plant simulation software specialized for operation optimization. . . . With his unique combination of interdisciplinary knowledge and skills, [the petitioner] proposed new inverse modeling techniques to construct equipment models, which greatly improved the accuracy of the simulation results. [The petitioner] also proposed innovative cost allocation methods to track the cost of plant operation, which is critical to conduct thermo-economic analysis. This is a landmark contribution in improving the utilities plant energy simulation. . . . [The petitioner's] research will substantially influence the work of others in the field of utilities plant simulation. As matter of fact, an outcome of [the petitioner's] outstanding research was used to develop a rate model for Texas A&M University, and the model results are used to guide the daily operation of its cogeneration utilities plant. In addition, the model is used to assess the cost and project the energy budget for the university's central plant.

notes that the petitioner's rate model is utilized by his present employer, but his letter does not specify how the petitioner's research regarding new inversed modeling techniques has already influenced the work of others in the field of utilities plant simulation. While the petitioner's research is no doubt of value, it can be argued that any engineering research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every engineering researcher who develops novel methodologies inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

Global Energy Metrics and Mosaics, states that he was a former senior administrator at the U.S. Department of Energy (DOE) before retiring from government service in 2003. further states:

During my years at DOE, one of the nation's most significant new programs was the Continuous Commissioning (CC) activity, initiated as part of the Texas LoanSTAR program at the Energy Systems Laboratory (ESL) at Texas A&M University (TAMU).

\* \* \*

[The petitioner] has successfully conducted many CC projects on the thermal distribution systems of Texas A&M University at College Station, University of Texas at San Antonio (UTSA), and other sites. These projects include: chilled water and heating hot water loops expansion, satellite plant heating hot water system innovative operation, domestic hot water system balancing, master planning, and condenser water system troubleshooting.

[The petitioner] also made significant contribution in the hydraulic simulation and its application on large thermal distribution systems. . . . By using the simulation models, [the petitioner] resolved a number of long-standing engineering issues in this area. He has published many high-quality papers that have been well-received by his research peers.

notes that the petitioner “has published many high-quality papers that have been well-received by his research peers,” but he does not explain how the petitioner’s work is being applied by others in the field. Similarly, a letter from [REDACTED] of the ESL, states: “[The petitioner’s] work has been published internationally in the proceedings of the World Energy Engineering Congress, International Building Performance Simulation Association Conference, and the International Conference on Enhanced Building Operation.” The letters from [REDACTED] and [REDACTED] do not provide examples of how the petitioner’s published and presented work has significantly impacted the field as a whole. For example, numerous independent citations for an engineering research paper authored by the petitioner would provide solid evidence that others in his field have been influenced by his work and are familiar with it. On the other hand, few or no citations of an article authored by the petitioner may indicate that his work has gone largely unnoticed by his field. In this case, the petitioner has not submitted evidence of any independent cites to his published or presented engineering research.

[REDACTED] further states:

I have worked with [the petitioner] and find him to have an extraordinary intellect in the field of energy conservation. He has an unusual expertise in Continuous Commissioning® technology, not commonly found in the engineering profession. . . . As a project leader, [the petitioner] has provided Continuous Commissioning in numerous institutional and industrial buildings as well as U.S. Army medical care facilities.

Training in advanced technology or unusual knowledge, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221.

[REDACTED] for Utilities, Physical Plant Department, Texas A&M University, states:

The Energy Systems Laboratory (ESL) at TAMU developed the process of Continuous Commissioning® of buildings and central utility plants. The ESL provides leadership for other building experts nationally and internationally by demonstrating the ongoing value of Continuous Commissioning®. . . . [The petitioner] is one of the few people in the United States who has expertise in this new technology domain . . . .

We asked the ESL to hire [the petitioner] because we need someone who not only has a thorough understanding of the operation of the entire utilities system, but who also can perform highly complicated engineering and economic analyses. . . . Through application of his advanced analytical and engineering skills, he has made an essential contribution to the results achieved at TAMU.

As discussed previously, it cannot suffice to state that the petitioner possesses useful skills, or a “unique background.” Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the

United States is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

[REDACTED], states:

I . . . began working for [REDACTED] in 1999 as their primary Project Engineer for lighting systems and utility conservation. I also managed and implemented several large-scale Continuous Commissioning® projects, several of which gave me ample opportunity to see [the petitioner] in action and get to know him personally. While my projects were often off-campus, [the petitioner's] were primarily on-campus to the Texas A&M system at various facilities . . . .

[The petitioner] has authored almost a dozen professional papers, presented relevant work at several scientific conferences, and has garnered substantial recognition in the field as evidence of the numerous awards he has won based on the quality of his energy conservation work.

While [REDACTED] notes that the petitioner has published and presented his research, he does not provide examples of how the petitioner's work is being used by independent researchers in academia or industry. Moreover, [REDACTED] does not specifically identify any of the "numerous awards" won by the petitioner for "the quality of his energy conservation work" and the record does not include evidence of any such awards. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

[REDACTED] states that he is a manager of energy conservation programs for his employer, IBM. [REDACTED] further states:

I am personally familiar with the Continuous Commissioning® technology developed by the ESL and trademarked due to its unique ability to significantly reduce energy use and environmental air pollution. This technology has achieved 15 to 25% energy savings on existing buildings at very low cost and typical paybacks of ½ to two-year payback at IBM facilities in Austin, Texas since 2004. The ESL is now deploying this critical technology nationwide for my employer, IBM. According to [REDACTED], the ESL has applied this technology to more than 300 buildings nationwide, with cumulative savings of over \$75 million. Additionally, the ESL at Texas A&M is one of only a hand-full of universities that trains engineers like [the petitioner] in this very important new engineering discipline.

However, due to the scarcity of trained experts in this field, the spread of this technology is very limited in the United States. Therefore, I strongly recommend your agency approve the national interest waiver petition for [the petitioner] based on the fact he is doing research and working in a critical field of great benefit to the U.S. and industry.



While [REDACTED] states that he is familiar with the Continuous Commissioning® technology developed by the ESL, his letter does not specify how the petitioner's work has influenced the field. Rather, [REDACTED] notes the "scarcity of trained experts" in the petitioner's field. We note that the employment certification process was designed to address the issue of worker shortages. A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. *NYS DOT*, 22 I&N Dec. at 221. Similarly, arguments about the overall importance of the petitioner's field of research may establish the intrinsic merit of his work, but such general arguments cannot suffice to show that an individual worker in his field qualifies for a waiver of the job offer requirement. *Id.* at 218.

On October 17, 2008, the director requested evidence demonstrating that the petitioner's prior achievements have had a significant impact in his field of endeavor. In response, the petitioner submitted additional letters of support.

[REDACTED] of Graduate Studies for Architectural Engineering at the University of Nebraska – Lincoln, states that he is "the primary founder of Continuous Commissioning® technologies, a landmark process that is supported by continuously developing and transferring building energy technologies that has been proven to save building energy consumption by 15 to 35 percent." [REDACTED] further states:

I have initiated/developed Continuous Commissioning® at Texas A&M University and continuously involved with the research activities at the Energy Systems Laboratory (ESL) at Texas A&M University for the last 20 years.

\* \* \*

Over the last 16 years alone, the ESL has installed Continuous Commissioning technology in more than 400 buildings nation-wide, resulting in cumulative savings of over 100 million US dollars. In collaboration with partner organizations and the state and federal government, ESL is translating proven technologies into financial growth.

\* \* \*

[The petitioner] is responsible for expanding the focus of Continuous Commissioning from building energy systems to energy plant and thermal distribution systems, (thus optimizing the operation and control of cogeneration plants, thermal utilities plants, and thermal distribution networks.)

\* \* \*

The following presents a list of world renowned facilities where [the petitioner] has made an impact:

(1) Texas A&M University (TAMU) at College Station, Texas,

- (2) Dallas/Fort Worth International Airport (DEW),
- (3) Austin-Bergstrom International Airport (ABIA),
- (4) Tripler Army Medical Center (TAMC) at Honolulu, Hawaii,
- (5) IBM Executive Center at Austin, Texas (IECA),
- (6) A major Data Center at Austin, Texas, and
- (7) University of Texas at San Antonio (UTSA) Downtown Campus.

Aside from the Tripler Army Medical Center in Hawaii, we note that all of the remaining facilities for which the petitioner provided engineering services were located in Texas. Such local projects do not establish the national impact of the petitioner's engineering work. Moreover, we cannot ignore that the Continuous Commissioning® technology was originally developed by [REDACTED] and that it had been in existence long before the petitioner came to work for the ESL. In contrast with [REDACTED] work, there is no intellectual property documentation showing that any technologies originally developed by the petitioner have been licensed or patented and then applied by others in his field. The petitioner's exposure to another's advanced technology (such as Continuous Commissioning®) constitutes, essentially, occupational training which can be articulated on an application for an alien employment certification.<sup>2</sup> As previously discussed, special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221.

[REDACTED] of Engineering and the Deputy Director of the TEES at Texas A&M University, states:

[The petitioner] is an outstanding researcher in optimizing energy consumption in buildings or industrial plants. The skills and knowledge of this field are extraordinary unique. The United States needs his state-of-the-art skills in Continuous Commissioning® technology. To lose a person with his skills would represent a serious setback to the development and transfer of Continuous Commissioning® technology. His permanent residency will benefit the U.S. by carrying and demonstrating Continuous Commissioning® to a broad audience.

As previously discussed, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT*, 22 I&N Dec. at 221.

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<sup>2</sup> The record does not contain any evidence that the petitioner has developed technology for which the ESL holds a patent, trademark, or license. An alien's job-related training in a new method, whatever its importance, cannot be considered to be an achievement or contribution comparable to the innovation of that new method. While innovation of a new method is of greater importance than mere training in that method, it must be stressed that such innovation is not always sufficient to meet the national interest threshold. For example, an alien cannot secure a national interest waiver simply by demonstrating that he or she holds a patent. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *NYSDOT*, 22 I&N Dec. at 221, n. 7.

[REDACTED] of Mechanical Engineering and Director of the ESL, Texas A&M University, states:

[The petitioner] has created many new CC® techniques, which are instrumental to the success of many plant and loop CC® projects such as: CC® of the TAMU Domestic Hot Water (DHW) System, Optimization of TAMU Cooling Towers Operation and Control, CC® of TAMU West Campus Heating Hot Water System, and CC® of the TAMU Cogeneration Plant. I would like to especially applaud [the petitioner's] outstanding work on the TAMU DHW CC® project. . . . [The petitioner] creatively designed a conceptual simulation model for the system. Using this model, he proved the correct solution to the problem was completely opposite to previous solutions attempted which were not only wasting energy but also making the problem even worse. . . . I feel the success of this project has a much more profound impact on the CC® process than simply solving this problem because it was the first example where the CC® concepts had been applied in the area of large DHW systems. The results of this research were presented and published at the World Energy Engineering Congress (WEEC) in Washington DC, which is the most important event of national scope for end users and energy professionals in the energy field.

With his outstanding thermal hydraulic simulation expertise, [the petitioner] has successfully supported the TAMU decision makers on many campus expansion projects by providing professional engineering services. These projects include TAMU 30-year Master Planning project, Agronomy Road Expansion project, Ross Street Underground Piping Replacement project, South Satellite Plant Expansion project, Indoor Athletic Facility project, Interdisciplinary Life Science Building project, the Mitchell Physics Building project, and many more.

\* \* \*

For the major data center in Austin, Texas, he developed optimized staging control and temperature reset schedule for six chillers and their associated cooling towers. [The petitioner] also developed new temperature and humidity control strategies, not only improving the reliability of this facility but also saving energy. His excellent recommendations led to \$56,000 savings per year and with less than one year payback.

\* \* \*

As one of the leading experts in the field of CC®, [the petitioner] has published a number of papers that are highly regarded. In July 2006, [the petitioner] presented and published a paper at the Symposium on Improving Building Systems in Hot and Humid Climates, introducing pioneering research results from applying CC® process to a modern central utility plant. As mentioned above, in September 2006, [the petitioner] published a paper at the World Energy Engineering Congress (WEEC) in Washington DC. His paper was the first time to demonstrate a very successful case study of implementing the CC® process in large

Domestic Hot Water systems. He is also the first author of several papers that were presented at the International Conference for Enhanced Building Operations (ICEBO) and the Symposium on Improving Building Systems in Hot and Humid Climates. In September 2007, [the petitioner]'s paper was presented at the Proceedings of the 10th International Building Performance Simulation Association Conference (IBPSA) in Beijing, China, an international conference on advanced building energy simulation. . . . Recently, he has been approached by [REDACTED] which is a German-based publisher for the manuscript of his dissertation – "Simulation of thermal plant optimization and hydraulic aspects of thermal distribution loops for large campuses." The publisher is willing to make [the petitioner's] academic research available to a wider international audience.

The petitioner's motion included a July 2008 e-mail message from [REDACTED] to [REDACTED] requesting that the petitioner submit his Ph.D. dissertation manuscript to VDM Verlag for review. The request from [REDACTED] post-dates the petition's July 25, 2007 filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, such a request for the petitioner to submit his manuscript for possible publication is not an indication that his unpublished work has already impacted the field as a whole.

[REDACTED] of Architectural Engineering and Director of the Indoor Environment Center at Pennsylvania State University, states that he came to know of the petitioner by reviewing materials provided to him "by the Texas A&M University (TAMU) Energy Systems Laboratory describing [the petitioner's] professional background and accomplishments."

TAMU is a leader in this field and has developed a particular process known by the service mark Continuous Commissioning® (CC) that is widely used by the private sector and the U.S. government.

\* \* \*

[The petitioner] has developed many innovative techniques in the process of successfully carrying out many challenging plant and distribution system CC projects, including the TAMU domestic hot water system, chilled water plant cooling tower control optimization, West Campus heating hot water system, and cogeneration plant. His pioneering research has extended the application CC to new frontiers. A good example is [the petitioner's] outstanding work on the TAMU cogeneration project.

TAMU has a 36.5 MW cogeneration plant equipped with gas turbine generator, steam turbine generators, industrial boilers, heat recovery steam boilers (HRSB). HRSBs can be operated either in heat recovery mode or in supplementary-firing mode. Usually, the cogeneration plant is designed to have maximum efficiency with the HRSB in heat-recovery mode. . . . To support the CC exercise, [the petitioner] developed an advanced thermal economic simulation model for the TAMU cogeneration system. Based on the simulation

results and his unique education and experience, [the petitioner] determined that because the thermal load profiles and cost of electricity and natural gas had changed so much from the time the plant was designed that, contrary to common practice, operating the HRSB in supplementary-firing mode would give the highest efficiency. The results of this research and detailed methods on how to determine optimal operation control for the HRSB were published in his dissertation for public access.

This was the first real example that the CC concepts had been applied in the area of cogeneration systems. It demonstrated that the conventional wisdom of operators is not always correct and that the application of scientific approaches to the evaluation of control strategies can yield tremendous benefits. The implementation of this operational change has saved the TAMU plant millions of dollars in energy costs and could save billions if the application of the methods developed by [the petitioner] were to be applied to the optimization of the tens of thousands of cogeneration plants currently in operation in the U.S.

The record, however, does not establish that the original simulation model and methodologies specifically developed by the petitioner have been successfully applied by other engineers at a significant number of other cogeneration plants throughout the U.S. as of the petition's filing date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Moreover, [redacted] does not claim to be using the petitioner's methods and provides no examples how the petitioner's work has influenced the field beyond the ESL projects in which he was directly involved.

[redacted] Dallas/Fort Worth International Airport, states:

I have direct knowledge of [the petitioner's] capabilities. He is the leader of a team that is working on energy efficiency and operational improvements for the Energy Plaza, the DFW Airport's central utility plant. He and his team have developed highly sophisticated models of our utility plant and hydraulic systems. They have optimized the operation of our chiller plant and its coupled chilled water, thermal storage system. Through their expertise, we have reduced our operational costs nearly \$200,000 thus far this year, and I expect the savings to increase to over \$500,000 next year. He and his team are improving our cooling tower operation, optimizing our chiller plant, and improving our overall thermal management practices, both for high temperature water and our glycol, low temperature water.

While the petitioner has applied his engineering skills to various projects assigned to him by his superiors at the ESL, there is no evidence demonstrating that his work has significantly impacted his field to an extent that justifies a waiver of the job offer requirement.

The director denied the petition stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. Among other deficiencies, the director's decision noted a lack of evidence showing that the petitioner's work has been cited by "colleagues and others in the field."

On motion to the director, the petitioner submitted a second letter from [REDACTED] addressing this finding stating:

CC® technologies developed by [the petitioner] are the properties of TEES and protected by intellectual property law. Without proper authorization, no one should use these technologies. That is why [the petitioner's] work is not cited by the general public often. In this case, the pure "internet" history of someone's work being cited by others should not be considered a reliable indicator of one's significant past impact or great contribution to the national interest.

Contrary to [REDACTED] statement, the director's decision did not refer to a lack of citation "by the general public," but rather by the petitioner's "colleagues and others in the field." For researchers, citations offer an objective way of measuring the extent to which one researcher's work has influenced the work of others in the field. Moreover, [REDACTED] assertion that the petitioner's research is not accessible due to intellectual property protections is not persuasive. [REDACTED] comments contradict earlier statements by [REDACTED] and [REDACTED]. For example, [REDACTED] states that the petitioner "has published a number of papers that are highly regarded." [REDACTED] states that the petitioner "has published several exceptional papers to share his research and experience with peers." Similarly, [REDACTED] notes that the petitioner "has published many high-quality papers that have been well-received by his research peers." [REDACTED] states: "[The petitioner's] work has been published internationally in the proceedings of the World Energy Engineering Congress, International Building Performance Simulation Association Conference, and the International Conference on Enhanced Building Operation." Finally, [REDACTED] states:

[The petitioner's] pioneering research in the area of Continuous Commissioning® has been widely published in national and international conferences, including the World Energy Engineering Congress, the Symposium on Improving Building Systems in Hot and Humid Climates, the International Building Performance Simulation Association, and the International Conference on Enhanced Building Operation.

On appeal, counsel points to non-precedent decisions by this office that, according to counsel, demonstrate that heavy citation is not necessary. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all U.S. Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding. Regardless, we agree that citations are not the only means by which to show the petitioner's impact on his field. Independent witness letters can also play a significant role in this respect. Here, however, the petitioner has submitted only a handful of such letters, which collectively fail to establish the depth or extent of his influence on the field as whole.

Counsel states that two "independent letters" of recommendation were submitted by [REDACTED] and [REDACTED]. We note [REDACTED] comment in the second sentence of his letter that he received information about the petitioner from the petitioner's supervisor at the ESL, [REDACTED]. Moreover, [REDACTED] notes that the ESL is deploying Continuous Commissioning® technology for his employer, IBM. Accordingly, the "independent" nature of [REDACTED] letter is not immediately

apparent. Nevertheless, the content of the letters of support has already been addressed in our discussion of the submitted evidence. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In this matter, we are not persuaded that the record contains sufficient evidence of any type that demonstrates the petitioner's influence in the field as a whole. While petitioner has contributed to multiple engineering projects undertaken by the ESL, he has not established that his past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. We note that the petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.")

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.